

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

ROBERT M. HERRIN

Serial No. **10/721,962**

Filing Date: **11/25/2003**

For: **TRAY FORMING APPARATUS**
(As Amended)

Examiner: **Eugene Lee Kim**

Group Art Unit: **3721**

Attorney Docket No.: **7703.26**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION OF ROBERT M. HERRIN MADE UNDER 35 USC §132

I, Robert M. Herrin, do hereby declare and say as follows:

1. I am a named inventor in the above referenced US Utility Patent Application. I am a citizen of the United States of America and a resident of the State of Florida, residing at 5935 Groveline Drive, Orlando, FL 32810.

2. I began a career in machine design and engineering as a mechanical drafter in 1966 with the Brunswick Corporation in Deland, Florida, a career that spanned forty years with most of the time spent as a senior designer and technical consultant for major corporations such as Procter & Gamble, M&M Mars, Georgia Pacific, and Smurfit-Stone, as examples. I formed R&L Technical Services in 1978, a technical consulting company and full service professional engineering provider, and sold it in 1997. In 1981, I formed R&L Manufacturing, Inc. operating it for twenty five years in the design and manufacture of packaging machinery. I have served as the senior mechanical designer for R&L Manufacturing and all of its products are a result of my design.

3. I am familiar with the patent process. I was awarded my first US patent in 1986 for a high speed carton erector which has experienced commercial success. To date, I have been awarded twenty three patents for which I am a named inventor. Many have seen commercial success. Eight of the patents deal with an apparatus or a method for forming a corrugated box or tray.

4. The Examiner has used US Patent No.5,971,906 to Tharpe, Jr. et al. for a "Tray Forming Apparatus and Method" to reject claims in the above referenced pending application. I am a named co-inventor of this Tharpe '906 patent and am very familiar with its disclosure and teachings. Further, this Tharpe '906 reference is a continuation-in-part of US Patent No. 5,782,732 for "Tray Forming Apparatus and Method of forming Same," for which I am the named sole-inventor.

5. My current invention as claimed in the above referenced pending application was needed to solve problems in tray forming as disclosed in the specification. The disclosure presented in the Tharpe '906 reference does not address such problems and its disclosure is not sufficient for meeting the needs identified in my pending application. The motivation for the invention in each is different as are the results. I would not expect a successful outcome for the claimed invention of the pending application from my teachings in the Tharpe '906 reference. Further, while some features may be common, as is the case in many tray forming applications, I needed to develop additional and different features for the pending application disclosure.

6. The Examiner is asked to consider some factual differences between the teachings in the Tharpe '906 reference and the teachings in the pending application to better understand why it would not be proper to rely on the teachings of Tharpe '906 for

rejecting claims in the pending matter. For example, Tharpe '906 teaches first folding means to fold the end panels up perpendicular to the bottom panel and folding the side panels up to an obtuse angle relative to the bottom panel. The structure disclosed for such forming would not work for the present invention. Specifically, the guide plate (158) called for in the amended Claim 1 does not exist in the Tharpe '906 disclosure, nor would it be suggested because of the need at the time the Tharpe '906 teachings were developed.

7. Another difference, not disclosed in Tharpe '906, include the application of an adhesive to portions of the blank prior to forming the blank. Tharpe '906 teaches the use of a shuttle to convey the partially formed blank past adhesive applicators and apply adhesive only an outer surface of minor side panels of the blank. For an embodiment of the invention described and claimed in the pending application, the applicator is positioned upstream the platen. Further, there is no motivation or suggestion in Tharpe '906 for such an arrangement of elements.

8. Extensive experimentation and testing took place during the development of the claimed invention. The elements, their cooperation with each other, and their positioning as disclosed and claimed would not be obvious to one of skill in the art, knowing the teachings of the Tharpe '906 reference, as suggested by the Examiner. Modification of the claimed invention based on the Tharpe '906 disclosure, as appearing to be suggested by the Examiner, would change the structure and operation of et claimed invention. I believe the Examiner has taken too much liberty in extending my teachings as presented in Tharpe '906 to a teaching of the claimed invention. This is further supported by my customers who have purchased the

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apparatus of the pending invention when they could have chosen that of tharpe 906.

9. I hereby declare that all statements made herein of my own accord are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that any such willful false statements may jeopardize the validity of the application or any patent issued thereon.

APRIL 5TH 2006
Date

Robert M. Herrin
Robert M. Herrin